



INVESTIGATIVE REPORT

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OFFICE: INDIANA DEPARTMENT OF HOMELAND SECURITY

TITLE: CONTRACT EMPLOYEES' CONFLICTS OF INTERESTS

CASE ID: 2016-12-0246

DATE: March 27, 2016

The Inspector General's Chief Legal Counsel, Tiffany Mulligan, after a review by Special Agent Mark Mitchell, reports as follows:

The Indiana General Assembly charged the OIG with addressing fraud, waste, abuse, and wrongdoing in agencies. IC 4-2-7-2(b). The OIG investigates criminal activity and ethics violations by state employees. IC 4-2-7-3(3). The OIG may recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government. IC 4-2-7-3(2). The OIG may also advise an agency on implementing policies and procedures to prevent and reduce the risk of wrongful acts within the agency. IC 4-2-7-3(2).

The Indiana Office of Inspector General (OIG) recently reviewed the Indiana Department of Homeland Security (IDHS) and found potential conflicts of interests concerns. Specifically, the OIG found a high risk of the appearance of conflicts of interests involving IDHS temporary contract employees who own outside private businesses and submit work for approval to IDHS and other state regulatory agencies. IDHS, along with many other state agencies, use contract labor for specified work for finite terms, utilizing a Quantity Purchase Agreement available

through an Indiana Department of Administration professional services agreement. While often referred to as temporary employees or “temps”, they are not state employees. Although most, if not all, temporary contract employees within IDHS do not trigger application of the Code of Ethics (Code) found in IC 4-2-6 and 42 IAC 1, these employees’ activities can raise questions and give the appearance of impropriety when their outside interests seemingly conflict with their duties to the State.

Code of Ethics – Conflict of Interests Provisions

The Code contains two rules that specifically address conflicts of interests: IC 4-2-6-9, the conflict of economic interests rule; and IC 4-2-6-10.5, the prohibition against financial interest in a contract rule.

First, the conflict of economic interests rule is set forth in IC 4-2-6-9 and provides, in relevant part, that a state employee may not participate in any decision or vote, or matter relating to that decision or vote, if he or she knowingly has a financial interest in the outcome of the matter. The rule requires a state employee who identifies a potential conflict of interests to notify his or her appointing authority and ethics officer in writing and either seek a Formal Advisory Opinion from the State Ethics Commission (Commission) on the potential conflict of interests or file a written disclosure statement with the Commission.

The prohibition against having a financial interest in a contract is set forth in IC 4-2-6-10.5 and provides, in relevant part, that a state employee shall not knowingly have a financial interest in a contract made by any state agency. The rule’s prohibition does not apply to a state employee who does not participate in or have contracting responsibility for the contracting

agency and who files a written disclosure statement with the OIG before the employee executes the contract with the state agency.

Both rules apply to state officers, employees, and special state appointees. For purposes of these rules, an “employee” means “an individual . . . who is employed by an agency on a full-time, part-time, temporary, intermittent, or an hourly basis.” IC 4-2-6-1(9). Employee also includes “an individual who contracts with an agency for personal services”; however, it does not include an individual who contracts for professional services. *Id.*

The contract workers who were the subject of the OIG review worked at IDHS pursuant to the Quantity Purchase Agreement with the Indiana Department of Administration. They are not considered state government employees and have neither the rights nor benefits of state government employees, nor do they have the identical limitations. The Code of Ethics does not apply to these employees.

In its review of possible conflicts of interests issues involving IDHS contract employees, the OIG learned that IDHS was verbally screening IDHS contract employees from participating in decisions or votes, or matters related to those decisions or votes, involving the contract employees’ outside businesses.

The decisions or votes that potentially impacted the employees’ outside businesses involved plans submitted to IDHS for approval; they did not involve contracts between the State and the employees’ outside businesses. The OIG also confirmed that the screens were working in that they were prohibiting IDHS contract employees from participating in projects in which their outside businesses were involved. Although verbal screens are a valuable first step in reducing potential conflicts of interest, the OIG makes recommendations below to strengthen these measures and to improve public confidence in the procedures.

Recommendations

Based on the OIG's review, the OIG makes the following recommendations in an effort to reduce any appearance of a conflict of interests involving contract employees within IDHS:

Recommendation 1

IDHS should adopt a written policy that provides parameters for IDHS contract employees who have a potential conflict of interests, including a financial interest in an outside entity that does business with IDHS. The policy should define a conflict of interests to specifically include any project submitted to IDHS for approval on which the contract employee or his or her outside business worked. It should also include any project submitted to IDHS for approval on which the contract employee or his or her business bid, even if the contract employee was not awarded the work, so that the contract employee is not using his or her position with IDHS to evaluate his or her competitor's work on a specific project. At a minimum the policy should require contract employees to disclose any potential conflict of interests in writing to IDHS' Ethics Officer and the contract employee's IDHS supervisor. The Ethics Officer should provide a formal written screen to all contract employees who have disclosed a conflict of interests from working on matters in which they have a financial interest. The policy also should include a process for reporting suspected violations of the policy to the appropriate IDHS personnel and to the OIG. This policy should be filed with the OIG in accordance with 42 IAC 1-6-1.

In its review, the OIG learned that IDHS was working on ethics policies for contract employees. The OIG recommends that IDHS include the conflict of interests policy described in this recommendation in their ethics policies.

Recommendation 2

Along with providing IDHS contract employees with a copy of the written policy described in Recommendation 1, IDHS should also provide written notification to all contract employees at the time of hire and on annual basis making them aware of both of the conflict of interests restrictions found in the Code, as well as the criminal conflict of interests statute, found in IC 35-44.1-1-4. The written notification should caution contract employees that even though the rules may not apply to them as contract employees, they should seek counsel to confirm the rules do not apply before taking action involving a potential conflict of interests. Even if the rules do not apply to specific contract employees, a conflict of interests may raise the appearance of impropriety or other concerns. Contract employees also should be aware that these rules will apply to them should they become hired on as state employees.

Respectfully submitted this 27th day of March, 2017.



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